IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 409 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SIRAJKHAN SATTARKHAN PATHAN

Versus

STATE OF GUJARAT

Appearance:

MR SURESH S PATEL for Petitioner No. 1

MR AJ DESAI, APP for Respondent No. 1

MR DM AHUJA for Respondent No. 2

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 24/08/2001

ORAL JUDGEMENT

1. This Revision Application is filed by the petitioner being aggrieved and dissatisfied with the judgment and order dated 24th July, 1999 passed by the learned Judicial Magistrate First Class, Kalol, below Exh.1 i.e. Complaint, filed by the petitioner before

learned JMFC, Kalol, and by the above said order, learned JMFC was pleased to dismiss the complaint u/s 203 of the Cr.P.C.

2. Short facts of the case are the present petitioner filed one private complaint before learned Judicial Magistrate First Class at Kalol on 6th August, 1997 against (1) Anvarkhan Abdulkhan Pathan, (2) Tejmohmad Sultankhan Pathan, (3) Amjadkhan Mohmadkhan Pathan, (4) Ayubkhan Abdulkhan Pathan, (5) Amankhan Habibullakhan Pathan and (6) Kasamkhan Hasamkhan Pathan, for the offences punishable u/Ss. 436, 427 read with Sec. 34 of the I.P.C. The complainant disclosed the incident of 20th May, 1997 wherein it was alleged that during that period the father of the complainant Sattarkhan Pirzada and the family members were staying in a house situated in Gullistapark Society, Block No. 13 at Kalol. On the day of the incident i.e. 20th May, 1997, at about 9.30 in the night, the family members of the petitioner had gone out of the house locking the house. The accused taking advantage of this position, set the house of the petitioner on fire, by which belongings and household articles of the petitioner and his family were burnt to ashes and the six accused, according to the complainant, are relatives and they had a common intention to commit the above said offence to burn the house of the complainant i.e. the present petitioner. It is also disclosed in the complaint that during setting fire in the house of the complainant, the original accused Nos. 1, 2 and 3 were also sustained burn injuries and due to this burn injuries they died during treatment in the hospital. It is also disclosed in the complaint that for this incident, a complaint is also filed against the father of the present petitioner and brother Safarajkhan Sattarkhan Pathan and Sikandarkhan Sattarkhan Pathan before the the Kalol Police Station which has been registered as Crime Register No. 90/97 on 23.5.1997. The present petitioner's father and the brothers were charged for the offences u/Ss. 436, 34, 326 and 307 of the IPC in the above said Crime Register No. 90/97, which was altered to Sec. 302 of the IPC on the death of three of the accused mentioned herein.

3. Learned Magistrate on the same day passed an order and directed the Police to investigate the complaint u/S. 156(3) of the Criminal Procedure Code. Thereafter, the Police Inspector, Kalol City Police Station, filed a report with regard to the above said complaint before the Judicial Magistrate First Class on 7.2.1998, wherein the Investigating Officer i.e. Police

Inspector, Kalol City Police Station came to the conclusion that one incident between the parties took place on 14.5.1997, for which a complaint as Crime Register No.86/97 was recorded before the Kalol Police Station for the offences punishable u/Ss. 302, 307, 326, 34, 147, 148, 149 and 504 of the IPC against the father of the present petitioner and other accused. The complaint was lodged on 14.5.1997, in which one Abdulkhan Pirzadakhan due to injuries died and the accused including the father of the petitioner were arrested on 3.6.1997. In this crime register, it is stated that this session trial was conducted and was completed which was resulted in conviction of the accused including the father of the petitioner. In the report, the Investigating Officer i.e. Police Inspector, Kalol City Police Station, further stated that in the above said Crime Register No. 86 of 1997, the accused including the father of the petitioner were absconding and during that period on 20.5.1997 at about 2130 hours (1) Pathan Anavarkhan Abdulkhan, (2) Tajmahamad Sulatankhan Pathan, (3) Amajadkhan Mahamadkhan Pathan, had gone to Gullistapark Society and were passing through near the house of the father of the petitioner. At that time, the accused of Crime Register No. 90 of 1997 took Anavarkhan Abdulkhan, Tajmahamad Sulatankhan and Amajadkhan Mahamadkhan, in the house of the father of the petitioner and after sprinkling the liquid like petrol, all the three were burnt by lighting fire on them. All the three above persons received serious injuries and in this fire, the household articles of the father of the complainant were also damaged due to fire. A complaint was registered against the father of the petitioner and other accused vide Crime Register No. 90 of 1997 before Kalol City Police Station on 23.5.1997 at 1430 hours. All the above three persons during treatment were died and, therefore the charge was altered to Sec. 302 of the IPC against the father of the petitioner along with other accused. It is also further mentioned by the Investigating Officer in his report that all the three victims were died due to burn injuries, offered their Dying Declarations, in which they have stated that (1) Saffarkhan Pirzadakhan (father of the petitioner), (2) Sarafarajkhan Sattarkhan, (3) Sikandarkhan Sattarkhan, (4) Salim Kalolwala and (5) Salim Amadabadi, set them to fire. Investigating Officer enclosed the copies of these DDs with his report to the Judicial Magistrate First Class. Therefore, it was the conclusion of the Investigating Officer in the complaint filed by the present petitioner that the petitioner has filed the complaint, which is registered as Inquiry Case No. 35 of 1997, to create his defence in the above said Crime

Register No.90/97. It was also stated by the Investigating Officer that the complainant has never given any complaint before the Police from the date of incident to 6th August, 1997. In the opinion of the Investigating Officer, the offence and the incident of the Crime Register No. 90/97, and mentioned in the complaint filed by the complainant i.e. Inquiry Case No. 35 of 1997 appears to be the same and, therefore, this complaint, according to the Investigating Officer, has been filed by the complainant only to create defence in the other criminal case registered against the father of the petitioner as Crime Register No. 90/97.

4. On receiving this report, learned JMFC, Kalol, issued notice to the complainant Sirajkhan Sattarkhan Pathan and he was heard. After hearing the complainant, the learned Magistrate came to the conclusion that, firstly, the said incident has been investigated by Police, vide Crime Register No. 90/97 in pursuance of Complaint given on 23.5.1997 while this complaint which was filed on 6.8.1997. The learned Magistrate also came to the conclusion that the complainant has not explained this delay. Learned Magistrate took into consideration the investigating papers of Crime Register No. 86 of 1997 and Crime Register No. 90/97 and came to the conclusion that the complaint in Crime Register No. 90/97 has been given immediately three days after the incident while the present complaint for the same incident has been delayed by two and half months, for which no explanation is offered by the complainant. Learned Magistrate also observed that the present complaint is ambiguous and learned Magistrate came to the conclusion that the complainant has attempted to conceal the true facts and hence the learned Magistrate believed that there was no reason to proceed further with the complaint and hence vide his impugned order dated 24.7.1999 u/S. 203 of the Criminal Procedure Code the complaint was dismissed. Being aggrieved by the above said order, this Revision is filed by the present petitioner who is original complainant of Inquiry Case No. 35 of 1997.

5. Learned Advocate Mr. Suresh S. Patel for the petitioner, learned Advocate Mr.D.M.Ahuja for respondent No.2 - Firozkhan Abdulkhan Pathan, who is one of the accused in Inquiry Case No. 35 of 1997 and learned APP Mr. A.J. Desai for respondent No.1 - State of Gujarat were heard at length. Learned advocate for the petitioner submitted vehemently that on filing the above said criminal compliant before the court, the court was of the view that the incident is required to be

investigated and hence the same was forwarded to the Police for investigation u/S. 156(3) of the Criminal Procedure code. It is vehemently urged that in violation of the direction of the court, the Police did not even attempt to investigate the allegations made in the complaint. Not even an iota of investigation was undertaken by the concerned investigating agency in respect of the complaint i.e. Inquiry Case No. 35 of 1997. Simply, the Investigating Agency filed his report dated 7.2.1998 before the Magistrate, which by no stretch of reasoning, could be said an investigation as envisaged u/s 156(3) of the Cr.P.C. It was also urged that neither the statement of the complainant nor the statements of any of the witnesses mentioned in the complaint has been recorded by the Investigating Agency and without following that procedure, the Investigating Agency came to the conclusion that the complaint filed was got up one for the defence of the complainant and his family. Learned Magistrate, according to learned Advocate Mr. Patel, ought not to have taken into consideration this report and ought to have forwarded the complaint for fresh investigation to some other independent agency like CBI or CID. Police was required to investigate the incident as narrated in the complaint i.e. in Inquiry Case No. 35 of 1997, instead, the report dated 7.2.1997 was filed and considering the report, the dismissal of the complaint was an illegality committed by the learned JMFC. It is urged that the Police exceeded the limits of investigation and became a judge and said that a got up complaint was filed and, therefore, the investigation as per law has not at all been carried out by the Police. Learned JMFC also ought not to have entered into an issue of delay and suppression of facts which is not the relevant issue at this stage of hearing of objections against the report of investigation. It is urged that, therefore, since the illegality is committed, interference of this Court is required in the order passed by the learned JMFC. It was urged that fresh inquiry or investigation be ordered through an independent Police Agency. It was also urged that till the finalisation of this inquiry, the trial, which is pending in Crime Register No. 90/97 against the father of the petitioner and other accused be stayed. The attention of the Court is also drawn to the affidavit filed by the Investigating Officer, which is at page 17 of the compilation. Mr. M.K. Chaudhary, Police Inspector, who had investigated the Crime Register No. 86/97 and Crime Register No. 90/97, filed an Affidavit before this Court in Spl. Criminal Application No. 839 of 1997. The attention of this Court is also drawn in para 3 of the said affidavit, wherein the Investigating

Officer has stated that the accused persons in Crime Register No. 86/97 were absconding and only they could be arrested on 3.6.1997. The attention of this Court was also drawn to Para-4 of the said affidavit, wherein the Inspector has deposed that the father of the petitioner and his family, the accused in Crime Register No. 86/97, fled away leaving his house locked and strict vigilance was kept on the house of the father of the present petitioner. It was urged that this denotes that the complaint i.e. Crime Register No. 90/97 was not the correct complaint but false one. The accused mentioned therein, according to this affidavit, were fled away from the house. Therefore, the incident has taken place as narrated in the complaint i.e. Inquiry Case No. 35/97 and the Police is required to investigate the same. Even after the order of the learned JMFC, this has not been done. Even then, learned JMFC has dismissed the complaint relying upon the report of the Investigating Officer. According to the learned Advocate for the petitioner, this is clear illegality and the order is required to be set aside ordering fresh investigation.

6. On the other hand, learned Advocate Mr. D.M. Ahuja for respondent No.2, has urged that in Crime Register No. 90/97, Police has investigated the offence and has recorded the statements of the witnesses. The father of the petitioner along with other accused are facing the trial for the same and the trial is pending before the Sessions Court. It is urged that the present complaint is filed after 2 and half months of the incident, for which no explanation is offered. Therefore, the complaint is filed only for creating defence in the trial which is being conducted in pursuance of Crime Register No. 90/97. The learned Judge has rightly accepted the version of the Investigating Agency that there was no substance in the complaint filed. Learned APP Mr. A.J. Desai supported the argument advanced by learned Advocate Mr. Ahuja.

7. From the facts narrated above and from the rival contentions, what clearly transpire is that the incident of present complaint is investigated by the Police in pursance of the complaint in Crime Register No.90/97, which is much earlier in point of time than present complaint. After taking into consideration the attending circumstances, the Investigating Officer came to the conclusion that the incident mentioned in the complaint in Inquiry Case No.35/97 and the incident of Crime Register No. 90/97 are the same. As stated above, facts go to show that in the incident which took place on 20.5.1997 three persons died by burn injuries. In that

incident, the father of the present petitioner along with the brothers of present petitioner and other accused facing the trial. The complaint in Crime Register No. 90/97 has been filed on 23.5.1997. The Police Inspector Mr. M.K. Chaudhary has investigated Crime Register No.90/97. The investigation in the present complaint i.e. Inquiry Case No.35/97 was also undertaken by the same Police Officer. In Crime Register No. 90/97 during investigation it was disclosed to the Investigating Officer that accused persons brought the victims of the incident in the house of the father of the petitioner and set them to fire by which three persons died. The police recorded the statements of important witnesses in this incident. Not only that, the three victims have offered their DDs in which they narrated the manner in which the incident in Crime Register No.90/97 had occurred. Considering all these aspects, a charge sheet was filed u/S. 302, etc of the Penal Code against the father of the present petitioner and other accused and they are facing the trial. Thereafter, i.e. after two and half months, the present complaint has been filed by this Complainant of the same incident, of the same day, which was forwarded to the same Police Officer for investigation who investigated the Crime Register No. 90/97. From the papers of Crime Register No. 90/97 and Crime Register No. 86/97, the Investigating Agency came to the conclusion that the complaint filed in Inquiry Case No. 35/97 was got up one because the incident had not occurred as stated in the complaint in Inquiry Case No. 35/97, but the incident took place as was investigated in Crime Register No.90/97. There was more than sufficient evidence with the Investigating Agency in Crime Register No. 90/97 to come to this conclusion. In this view of the matter, the contention of the petitioner that neither the statements of the witnesses nor the statement of the complainant was recorded by the Police Inspector in pursuance to the order of the learned JMFC to investigate the complaint u/S 156(3) of the Criminal Procedure Code would not stand at all. There is no rule of law which establishes that in investigation, inevitably the statements of the complaint and witnesses named in the private complaint be recorded and unless such statements are recorded, that cannot be labelled as an investigation. Investigation is the exclusive realm of the Investigating Agencies. When these investigations are placed before the Court for scrutiny, the courts will have to find out whether the search for the truth in respect to the allegations made in the complaint was made by the concerned Investigating Agency or not. There is no settled mode and only mode prescribed by the law that invariably in the investigation, the statements of the

complainant and the witnesses will have to be recorded by the Investigating Agency. In whatever mode suiting best to the Investigating Agency, investigation can be made. In the present case, the Investigating Agency has relied upon the investigation by Police in Crime Register No.90/97 and adopting this mode, Investigating Officer submitted report to the learned JMFC, who exercised his discretion to dismiss the complaint. If the facts are perused again, strikingly, it is noted that the present complaint of the same incident has been made after two and half months of the incident, and the complaint in Crime Register No.90/97 has been filed on 23.5.1997. Upto two and half months, when the complaint came to be filed there was substantial progress in investigation of the Crime Register No.90/97 and certain facts were ascertained by the Investigating Agency. Not only that the delay caused in filing the complaint has not been explained by the complainant. The accused i.e. father of the petitioner were arrested in Crime Register No.86/97 on 3.6.1997. The present incident took place on 20.5.1996, but even after the accused were arrested in Crime Register No.86/97, none of the accused made any complaint before the Police regarding the allegation made in the complaint i.e. Inquiry Case No.35/97. The present petitioner appears not to be the accused in any of the crimes registered, even then, he also did not make any complaint to the Police. There is nothing on the record to believe that the complainant approached the Police but the complaint was not recorded by the Police. Accused i.e. father of the petitioner along with other accused must have been produced before the Magistrate also. There too, none of them have made any complaint regarding the allegations made in the present case. In the circumstances, the report filed by the Investigating Officer on 7.2.97 must be considered to be the investigation and relying on this report, and having considered the papers in Crime Register No. 86/97 and Crime Register No. 90/97, the learned Magistrate has rightly come to the conclusion that the complaint has been filed by suppressing the true facts and there was no reason to proceed with the Criminal Complaint i.e. Inquiry Case No.35/97. It, therefore, clearly appears that present complaint is nothing but deliberate device to attempt to place conflicting investigation in trial in pursuance of Crime Register No. 90/97 which is proceeded against the father of the petitioner and other accused. There is no illegality committed by the learned JMFC in coming to the conclusion vide order which is impugned.

8. For the above stated reasons, this Criminal Revision Application must fail and is dismissed

accordingly. Rule is discharged. Interim relief granted by this Court on 3.5.2001 is vacated.

(J.R. Vora, J.)

p.n.nair